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Claim Holders*

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**STATEMENT OF THE AD HOC GROUP
OF SUBROGATION CLAIM HOLDERS
REGARDING AUGUST 27, 2019 STATUS
CONFERENCE ON ESTIMATION**

Date: August 27, 2019
Time: 9:30 a.m. (Pacific Time)

1 ■ Affects both Debtors

Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

2 *All papers shall be filed in the Lead Case,
3 No. 19-30088 (DM)
4
5

6 The Ad Hoc Group of Subrogation Claim Holders (“**Ad Hoc Subrogation Group**”)
7 submits this Statement in advance of the status conference set for August 27, 2019 to address
8 various issues posed by the Court, as well as additional issues it respectfully suggests should be
9 discussed at the conference.
10

11 **Debtors’ Identification of Disputed Claims and Anticipated Defenses**

12 In an August 22, 2019 letter (the “**August 22 Letter**”) to the parties, the Debtors proposed
13 that the Official Committee of Tort Claimants (the “TCC”) and the Ad Hoc Subrogation Group
14 file opening briefs in the estimation proceedings “identifying in advance of the hearings the legal
15 and factual issues relating to liability that *they believe* are in dispute.” (Ex. A at 2 (emphasis
16 supplied).) Such an approach flies in the face of the procedures ordinarily governing the
17 resolution of disputed claims in bankruptcy and is both inefficient and improper.

18 It makes no practical sense for the TCC and the Ad Hoc Subrogation Group to prepare
19 factual and legal support for briefing based on the challenges they “believe” the Debtors will raise
20 to liability for fires that, at least in some cases (although the Debtors obfuscate which ones), the
21 Debtors admit they started. Having moved to challenge wildfire-related claims in an estimation
22 proceeding, the Debtors must have a clear understanding of the aspects of those claims they
23 intend to dispute, and it is their burden to provide that information now.

24 The Ad Hoc Subrogation Group therefore agrees with the TCC that the first step in
25 framing any estimation proceeding is for the Debtors to identify the grounds for their objections
26 to the wildfire claims—to identify and clarify the defenses to liability that they intend to raise and
27 any factual or legal defenses to those claims (or elements of claims) they intend to raise, with
28 respect to both liability and damages, for each wildfire. The TCC has served interrogatories on

1 the Debtors seeking such information with respect to the underlying claims for liability, and the
2 Ad Hoc Subrogation Group supplemented those questions in a letter to counsel for the Debtors
3 asking the Debtors to specify which elements of subrogation damages the Debtors intend to
4 dispute at trial. The Debtors should respond to those inquiries, formally or informally, as soon as
5 practicable.

6 It is fundamental that a proof of claim is deemed allowed unless a party in interest objects,
7 and that even where an objection to a claim is filed, a proof of claim executed and filed in
8 accordance with the bankruptcy rules is *prima facie* proof of the validity and amount of the claim.
9 See 11 U.S.C. § 502(b); Bankruptcy Rule 3001(f); *In re S. California Plastics, Inc.*, 165 F.3d
10 1243, 1248 (9th Cir. 1999); *In re Wallace*, 690 F. App'x 988, 989 (9th Cir. 2017). Although there
11 may be cause for estimating the wildfire claims in this case, there is no cause for allowing the
12 Debtors to run away from their obligation to set forth the legal and factual bases for objecting to
13 the wildfire claims (especially where, as described below, the Debtors are not contesting
14 causation for all but one of the wildfires).

15 In response, the Debtors protest that the TCC and Ad Hoc Subrogation Group have been
16 litigating these claims for two years and should know what the Debtors dispute. But the Debtors
17 preempted that litigation by filing for bankruptcy protection and submitting themselves to the
18 procedures for challenging proofs of claim, and the litigation the Debtors have initiated is not a
19 continuation of the state court litigation, but an estimation proceeding under the rubric of the
20 claim resolution procedures established under federal bankruptcy law. Indeed, with respect to the
21 Camp Fire (which comprises a large share of the damages in dispute), the automatic stay went
22 into effect before any substantial discovery or litigation had occurred. Moreover, it is an
23 estimation proceeding that the Debtors demand must be accomplished on an exceedingly tight
24 schedule (after having waited over five months to commence it, and having blocked discovery
25 during that time), to accommodate their restructuring and emergence within a matter of months.
26 In that context, the Ad Hoc Subrogation Group and the TCC should not be left to guess which or
27 how much of their claims the Debtors will challenge in the estimation proceedings they initiated.
28

1 Requiring the Debtors to provide notice of exactly what they intend to dispute in these
2 expedited estimation proceedings is a basic requirement of due process and consistent with the
3 basic construct of the claim objection process. And these questions are not academic; they are
4 entirely practical. For example, the Debtors have represented to this Court that for purposes of
5 estimation, they “are prepared to agree that as part of their proposed estimation process they will
6 not contest causation with respect to any Wildfire for which the California Department of
7 Forestry and Fire Protection (“CAL FIRE”) has concluded PG&E is responsible. That means the
8 Debtors will not contest causation for estimation purposes with respect to the 2018 Camp Fire or
9 any of the 22 separate 2017 North Bay Fires listed in section III.A below, except the 2017 Tubbs
10 Fire.” Estimation Procedures Motion at 11 (Doc. 3091). However, the Debtors later stated that
11 they reserved their rights to contest causation with respect to additional fires beyond Tubbs. *Id.* at
12 18 (“With respect to the Camp Fire, while the Debtors have accepted CAL FIRE’s determination
13 that PG&E transmission facilities near Pulga ignited the fire, the Debtors have not formed a
14 conclusion as to whether a second fire ignited nearby as a result of vegetation contact with its
15 electrical distribution lines and reserve all rights concerning that causation issue.”). Similarly, at
16 the August 14 hearing on the estimation motion, the Debtors indicated that they may contest
17 causation during the estimation process, along with negligence. Aug. 14 Hr’g Tr. 31:23-25 (“we
18 still have to go to the estimation process, and we still have to deal with the causation, we still
19 have to deal with the negligence”). And the Debtors apparently have cherry-picked certain fires
20 they intend to litigate specifically in estimation because they believe those fires involved other
21 causes (although until the Debtors explain why they selected those fires, we cannot be sure, which
22 is exactly the point).

23 Similarly, the Debtors so far have refused to identify which elements of the Ad Hoc
24 Subrogation Group’s subrogation damages they intend to dispute, and on what basis. The fires
25 caused widespread property damage – residential, commercial, agricultural, horticultural,
26 structural, permanent, temporary, complete, partial, etc. The dozens of insurers responsible for
27 responding to claims acted quickly and effectively to help their insureds deal with the devastation
28 resulting from wildfires that PG&E caused and begin the process of rebuilding. Now the

1 Debtors, which *seem* to admit they started at least some of the fires that created these insurance
2 claims, have indicated that they intend to challenge the Ad Hoc Subrogation Group's right to
3 recoupment based on those insurance claims, but refuse to say which kinds of insurance payments
4 they will not reimburse or on what basis.

5 Instead, the Debtors served a massive discovery request on the Ad Hoc Subrogation
6 Group demanding *every* "claim file" for *every* insurance policy connected with *every* fire. They
7 have not explained which pieces of the claims files would be relevant to the aspects of the
8 insurance reimbursements they intend to dispute, or even the categories of data they would expect
9 to be in what they label a "claim file." This is no way to proceed in an expedited hearing.
10 Gathering all information related to every underlying claim from active and on-going insurance
11 relationships from more than 80 insurance carriers, claims arising from payments to thousands of
12 insured victims, is the definition of inefficiency. Instead, the Debtors should identify what
13 aspects of the claims they are challenging and what data they need to support and quantify those
14 challenges, after which the parties can discuss how to approach what certainly will be a logistical
15 challenge even after the issues are narrowed.

16 In short, without clarity on which aspects of liability and damages the Debtors are
17 challenging, for which wildfires, there is no way for the parties to come to agreement on the date
18 for the estimation trial, the extent of discovery needed, the number of witnesses, the timing of
19 expert and pre-trial disclosures, or a myriad of other issues relevant to the conduct of the
20 estimation proceeding. Accordingly, the Ad Hoc Subrogation Group respectfully requests that
21 the Court require the Debtors to identify the issues that they believe are in dispute, so that the
22 parties and the Court can develop a schedule for discovery and the estimation trial, as further
23 discussed below.

24 25 **Schedule for Discovery and Estimation Trial**

26 After the above process occurs, the parties can commence an expedited discovery and pre-
27 trial process. It is the view of the Ad Hoc Subrogation Group that discovery should proceed in
28 three principal stages: (1) document productions, (2) followed by depositions, and (3) followed by

1 expert discovery (including the exchange of reports and depositions). Thereafter, the parties can
2 engage in customary pre-trial disclosures, including the exchange of exhibits, identification of
3 witnesses and pre-trial briefing, consistent with this Court's procedures and rules. The Ad Hoc
4 Subrogation Group is confident that the parties can meet and confer and agree upon some if not
5 all of these deadlines. However, those deadlines need not be set (and should not be set) until the
6 parties receive further clarification on the timing of the final estimation hearing, as the time
7 allotted for each stage of pretrial proceedings will depend on the hearing schedule.

8 As previously discussed with the Court, the subrogation parties and individual wildfire
9 claimants propounded a letter to the Debtors on July 1, 2019 identifying the major areas of open
10 discovery. The parties are currently meeting and conferring regarding those categories of
11 discovery, and the Ad Hoc Subrogation Group will consider whether additional requests, formal
12 or informal, are necessary. Any disputes can and will be addressed to the Court promptly. This
13 process has already begun and should continue while the parties and Court continue to work out
14 the details of a pre-trial schedule.

15
16 **Scope and Subject Matter of Estimation Trial**

17 The Debtors' August 22 Letter, which envisions piecemeal briefing of legal issues and six
18 separate evidentiary hearings on individual wildfires, followed by another trial on damages, is
19 wasteful, inefficient and frankly unworkable under the time constraints in place. (Ex. A.) Should
20 the Debtors wish to limit their presentation to certain fires at the estimation hearing, that is their
21 prerogative. However, it would be unfair and imprudent at this early stage for the scope of the
22 hearing and the evidence to be presented to be determined – before necessary disclosures and
23 discovery has occurred. Rather, once a venue and date for the estimation hearing is established, a
24 fair allocation of time among the parties for the estimation hearing can be determined; at that
25 point, the parties can further consider the presentation of evidence based on the issues that are in
26 dispute, as clarified and narrowed through disclosures and discovery.

1 **Inverse Condemnation Briefing Schedule**

2 The Court has issued a proposed schedule regarding briefing on the issue of inverse
3 condemnation. The Ad Hoc Subrogation Group generally agrees with that schedule, with slight
4 modification: the Ad Hoc Subrogation Group requests that the Debtors submit their pleadings on
5 this issue by November 1, 2019 (the date the Court has proposed), with all oppositions be filed by
6 November 22, 2019 (a week later than the Court proposed), and any replies be submitted by
7 December 3, 2019.
8

9
10 **Mediation**

11 The Ad Hoc Subrogation Group welcomes the opportunity to participate in a Court-
12 ordered mediation, as a consensual resolution of all wildfire claims is in the best interests of all
13 stakeholders. The Ad Hoc Subrogation Group proposes that the Court set a date for the parties to
14 agree on a suitable mediator and location for the mediation. The mediation can proceed in
15 parallel with discovery and other pre-trial proceedings.
16

17 We look forward to discussing these issues, and any others the Court would like to
18 discuss, at the conference on August 27.
19

20 Dated: August 26, 2019
21

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